

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 790
Committee Substitute Favorable 5/2/23

Short Title: Innocence Inquiry Commission Provisions. (Public)

Sponsors:

Referred to:

April 19, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY LAWS RELATING TO THE NORTH CAROLINA INNOCENCE
3 INQUIRY COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 92 of Chapter 15A of the General Statutes reads as rewritten:

6 "Article 92.

7 "North Carolina Innocence Inquiry Commission.

8 ...

9 **"§ 15A-1465. Director and other staff.**

10 (a) The Commission shall employ a Director. The Director shall report to the Director of
11 the Administrative Office of the Courts, who shall consult with the Commission chair. The
12 Director shall be an attorney licensed to practice in North Carolina at the time of appointment
13 and at all times during service as Director. The Director shall assist the Commission in
14 developing rules and standards for cases accepted for review, coordinate investigation of cases
15 accepted for review, maintain records for all case investigations, prepare reports outlining
16 Commission investigations and recommendations to the trial court, and apply for and accept on
17 behalf of the Commission any funds that may become available from government grants, private
18 gifts, donations, or devises from any source. The acceptance of private gifts and donations shall
19 not create any obligation for the Commission. The Director shall have the sole authority to direct
20 the use of private gifts and donations.

21 ...

22 **"§ 15A-1468. Commission proceedings.**

23 ...

24 (a2) The Innocence Inquiry Commission shall include, as part of its rules of operation, the
25 holding of a prehearing conference to be held at least ~~10~~ 30 days prior to any proceedings of the
26 full Commission. The Commission may also call a prehearing conference at any time the
27 Commission has developed credible evidence to support a claim of factual innocence. If a
28 Commission hearing is continued for any reason, at least 10 days before the newly scheduled
29 hearing there shall be a subsequent prehearing conference to discuss any newly developed
30 evidence that was not previously provided. Only the following persons shall be notified and
31 authorized to attend the a prehearing conference: the District Attorney, or the District Attorney's
32 district attorney, or the district attorney's designee, of the district where the claimant was
33 convicted of the felony upon which the claim of factual innocence is based; the claimant's
34 counsel, if any; the Chair of the Commission; the Executive Director of the Commission; and
35 any Commission staff designated by the Director. ~~The District Attorney, or designee, shall be~~
36 provided (i) an opportunity to inspect any evidence that may be presented to the Commission



1 that has not previously been presented to any judicial officer or body and (ii) any information
 2 that the District Attorney, or the District Attorney's designee, deems relevant to the proceedings.
 3 The district attorney, or designee, and the claimant's counsel shall be provided the ability to
 4 access, review, and inspect the Commission's entire case file at least 60 days prior to the
 5 Commission hearing. The Commission shall present and make available the information pursuant
 6 to this section in a reasonably organized manner that is not to be overly burdensome to the
 7 Commission, the district attorney, or the claimant's counsel. At least 72 hours-10 days prior to
 8 any a Commission proceedings, hearing, the District Attorney district attorney or designee is
 9 authorized to provide the Commission with a written statement, which shall be part of the record.
 10 The Commission shall have an ongoing duty to provide any newly discovered evidence to the
 11 district attorney and the claimant's counsel until the hearing begins. Evidence not provided to the
 12 district attorney and the claimant's counsel in the initial release of information shall be provided
 13 at least 10 days prior to the Commission hearing. The Commission shall keep a clear record of
 14 which materials have been previously made available for review and inspection.

15 (b) The Director shall use all due diligence to notify the victim at least 30-10 days prior
 16 to ~~any proceedings of the full Commission~~ the initial prehearing conference required in
 17 subsection (a2) of this section held in regard to the victim's case. The Commission shall notify
 18 the victim that the victim is permitted to attend proceedings otherwise closed to the public,
 19 subject to any limitations imposed by this Article. If the victim plans to attend proceedings
 20 otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance
 21 of the proceedings of the victim's intent to attend. Nothing in this section prevents the Director
 22 from notifying the victim at an earlier date in the proceedings.

23 ...

24 (d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed
 25 through formal inquiry or Commission proceedings shall be referred to the appropriate authority.
 26 Evidence favorable to the convicted person disclosed through formal inquiry or Commission
 27 proceedings shall be disclosed to the district attorney, or the district attorney's designee, of the
 28 district where the claimant was convicted of the felony upon which the claim of factual innocence
 29 is based, the convicted person-person, and the convicted person's counsel, if the convicted person
 30 has counsel.

31 ...

32 **"§ 15A-1469. Postcommission three-judge panel.**

33 ...

34 (a1) If the Commission concludes that there is credible evidence of prosecutorial
 35 misconduct ~~in the case, by the current district attorney of the district where the claimant was~~
 36 convicted of the felony upon which the claim of factual innocence is based, the Chair of the
 37 Commission may request pursuant to G.S. 7A-64 the Attorney General-Director of the
 38 Administrative Office of the Courts to appoint a special prosecutor to represent the State in lieu
 39 of the district attorney of the district of conviction or the district attorney's designee. The request
 40 for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion
 41 finding sufficient evidence of innocence to merit judicial review.

42 ~~Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney~~
 43 ~~General may temporarily assign a district attorney, assistant district attorney, or other qualified~~
 44 ~~attorney, to represent the State at the hearing before the three-judge panel. However, the Attorney~~
 45 ~~General-Director of the Administrative Office of the Courts shall not appoint as special~~
 46 ~~prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the~~
 47 ~~convicted person, or is a prosecuting attorney in the district where the convicted person was tried-~~
 48 ~~person.~~ The appointment shall be made no later than 20 days after the receipt of the request.

49 ...

50 (d) The three-judge panel shall conduct an evidentiary ~~hearing-~~ hearing in accordance
 51 with the North Carolina Rules of Evidence. At the hearing, the court, and the defense and

1 prosecution through the court, may compel the testimony of any witness, including the convicted
2 person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge
3 in a prior proceeding, may be presented during the hearing. The convicted person may not assert
4 any privilege or prevent a witness from testifying. The convicted person has a right to be present
5 at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present
6 shall be in writing. At least 10 days prior to the evidentiary hearing, the district attorney and the
7 claimant's counsel must provide to the other parties any evidence each intends to introduce at the
8 evidentiary hearing. Any evidence not timely provided to the other parties shall not be admissible
9 at the hearing, absent good cause shown as determined by the three-judge panel.

10"

11 **SECTION 2.** This act is effective when it becomes law and applies to proceedings
12 held on or after that date.